

**PART 963—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO VIOLATIONS OF THE PANDERING ADVERTISEMENTS STATUTE, 39 U.S.C. 3008**

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AUTHORITY: 39 U.S.C. 204, 401, 3008.

SOURCE: 52 FR 18912, May 20, 1987, unless otherwise noted.

**§ 963.1 Authority for the rules.**

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 226.2(e)(1)).

[52 FR 18912, May 20, 1987, as amended at 59 FR 10751, Mar. 8, 1994]

**§ 963.2 Scope of the rules.**

These rules of practice are applicable to cases in which the Prohibitory Order Processing Center Manager (hereinafter, “Manager”) has issued a complaint, pursuant to 39 U.S.C. 3008(d), alleging violation of a prohibitory order, and in which the alleged violator has petitioned for a hearing in the matter. As provided in 39 U.S.C. 3008(h), subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of

title 5, U.S.C., do not apply to the hearings authorized by 39 U.S.C. 3008(d).

[52 FR 18912, May 20, 1987, as amended at 59 FR 10751, Mar. 8, 1994, 62 FR 4459, Jan. 30, 1997]

**§ 963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.**

(a) *Petition.* Anyone against whom a complaint has been issued pursuant to 39 U.S.C. 3008(d) may submit to the Manager a petition for hearing on the alleged violation. The petition must be in writing, signed by the petitioner or his or her attorney, and filed with the Manager on or before the 15th day after receipt of the complaint. The petition shall state the reasons why the petitioner believes the complaint to be erroneous. No petition received after the 15th day will be considered to have been filed on time, unless it was duly sent to the Manager via certified mail, deposited in the U.S. mail on or before the 15th day. The Manager will forward each timely petition to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

(b) *Notice of hearing.* Upon receiving a petition, the Recorder shall schedule a hearing for a date not later than 30 days after the date of receipt, issue and send a notice of hearing to the parties, and send a copy of the petition to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel shall file with the Recorder an answer to the petition within 15 days after the date of receiving a copy thereof. A certified copy of the material documents from the Manager’s case file (i.e., of the PS Forms 1500, *Application for Listing and/or Prohibitory Order*, 2152, *Prohibitory Order*, and 2153, *Complaint*, underlying mail pieces, and pertinent return receipts) shall be appended to the answer.

(d) *Filing and copies of documents.* With the exception of the initial petition, all documents shall be filed with the Recorder in triplicate at the address set forth above. The Recorder shall promptly provide copies to the other party to the proceeding and to the presiding officer.

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(e) *Summary Judgment.* Upon motion of either the General Counsel or the petitioner, or on his or her own initiative, the presiding officer may find that the petition and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or dismissing the complaint. The initial decision shall become the final agency decision if a timely appeal is not taken.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987, as amended at 59 FR 10752, Mar. 8, 1994; 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

#### § 963.4 Presiding Officer.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his or her own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary properly to preside over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

#### § 963.5 Appearances.

(a) *Petitioner.* A petitioner may appear and be heard in person or by attorney. An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter). When a petitioner is represented by an attorney, all pleadings and other papers to be served on petitioner after entry of the attorney's appearance shall be mailed to the attorney. A petitioner must promptly file notice of any change of attorney.

(b) *Postal Service.* The Postal Service will be represented by its General

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Counsel or any attorney designated by the General Counsel.

#### § 963.6 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

#### § 963.7 Location of hearing.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078, or other locations designated by the presiding officer.

[63 FR 66053, Dec. 1, 1998]

#### § 963.8 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his or her behalf at a place other than that designated for hearing in the notice. The party shall support his or her request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall consider the convenience and necessity of the parties and the relevance of the evidence to be offered.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

#### § 963.9 Election as to hearing.

If both parties elect, an oral hearing may be waived and the matter submitted for decision on the basis of the petition and answer, and of any documentary evidence or briefs requested by the presiding officer. The written election to waive oral hearing must be received by the Recorder no later than 10 days prior to the scheduled hearing date.

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### § 963.10 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

### § 963.11 Default.

If a petitioner, without notice or cause satisfactory to the presiding officer, fails to appear at the hearing or comply with any of the provisions of these rules or an order issued by the presiding officer, the petitioner may be deemed to have abandoned his or her petition and to have acquiesced in the allegations of the complaint. The presiding officer thereupon may find the petitioner to be in default and refer the matter to the Judicial Officer for dismissal of the petition.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

### § 963.12 Settlement agreements.

These rules do not preclude the disposition of any matter by agreement between the parties at any stage of the proceeding.

### § 963.13 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a petitioner's witnesses or for depositions requested by a petitioner.

### § 963.14 Discovery.

Discovery is to be conducted on a voluntary basis to the extent possible. The presiding officer may, upon application of either party, order such discovery as he or she deems reasonable and necessary. Discovery may include one or more of the following: production of documents, requests for admissions, interrogatories, depositions, and witness lists. The presiding officer will establish the terms upon which requested discovery will be allowed.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

### § 963.15 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substan-

tially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

### § 963.16 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

### § 963.17 Proposed findings of fact and conclusions of law.

(a) Each party who participates in the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law, orders, and supporting reasons, either in writing or orally at the discretion of the presiding officer. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders, and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders, and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each

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proposed conclusion shall be stated separately.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987]

### § 963.18 Initial decision.

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

### § 963.19 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

### § 963.20 Final agency decision.

The Judicial Officer, or by delegation the Associate Judicial Officer, renders the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

### § 963.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

### § 963.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 18912, May 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

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## PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

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AUTHORITY: 39 U.S.C. 204, 401, 3003, 3004.

SOURCE: 52 FR 36763, Oct. 1, 1987, unless otherwise noted.

### § 964.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the United States Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

### § 964.2 Scope of rules.

The rules in this part provide for administrative review of cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3003(a), has withheld from delivery mail which he believes is involved in a scheme described in section 3003(a), and cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3004, determines that letters or parcels sent in the mail are addressed to places not the residence or